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Supreme Court of the United States

OCTOBER TERM, 1965

No. 3

WILLIAM ALBERTSON and ROSCOE QUINCY PROCTOR,

Petitioners,

—v.—

SUBVERSIVE ACTIVITIES CONTROL BOARD.

**BRIEF FOR AMERICAN CIVIL LIBERTIES UNION,
*AMICUS CURIAE***

AMERICAN CIVIL LIBERTIES UNION

Amicus Curiae

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BRIEF FOR AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE*

This brief is submitted on consent of the parties filed with the Clerk. The American Civil Liberties Union is a nationwide organization devoted to the implementation of the guarantees of liberty and freedom from discrimination embodied in the Constitution and laws of the United States and the various states. We are interested in this case because it involves First Amendment rights as well as the privilege against self-incrimination.

Statement of the Case

Petitioners were found by the Subversive Activities Control Board to have been members of the Communist Party and were ordered to register as such. The Court of Appeals for the District of Columbia Circuit sustained the order.

Both in the hearings before the Board and in the petition for review petitioners challenged the constitutionality

of the law and claimed that to require them to register would violate their privilege against self-incrimination. The Court below rejected the constitutional arguments and held that the self-incrimination contention was premature, relying on this Court's decision in *Communist Party v. SACB*, 367 U. S. 1. We respectfully urge that the *Communist Party* case is not controlling on either issue.

POINT I

With respect to the issue of self-incrimination.

It is, of course, correct, as the Court below has said, that in the *Communist Party* case this Court refused to rule on the issue of self-incrimination, holding that it should await the raising of such issue in a prosecution for failing to register. But the conclusion of the Court below that the same rule of abstention is applicable here cannot be sustained.

In the first place, the basic issue of the impact of the privilege on this very registration statute was considered in *Communist Party v. United States*, 331 F. 2d 807, certiorari denied 377 U. S. 968. It is true that a new trial was ordered in that case, but only to give the government an opportunity to show that some one was available to the Party to sign the necessary documents who would not claim any privilege since the regulations permitted action on behalf of the organization. No such escape from the privilege exists in the case of an individual since it is he and he alone who must sign.

Moreover, the reason which led this Court to refrain from deciding the issue in the earlier case was an uncertainty

whether or not, or in what manner, the privilege would be claimed. Here there can be no uncertainty on this head since each petitioner expressly claimed his privilege both before the Board and in the Court below and it was rejected by the Attorney General as without merit. To require petitioners, under these circumstances, to risk criminal prosecution with the cumulative sanctions provided would be a mockery of justice.

That the claim is constitutionally valid can hardly be disputed in the light of cases such as *Blau v. United States*, 340 U. S. 159, *Brunner v. United States*, 343 U. S. 918, and *Quinn v. United States*, 349 U. S. 155. There can be no doubt, moreover, that Congress' attempt to circumvent the privilege by the addition of Section 4(f) must fail since no immunity is granted, but merely a ban on the use of the testimony. A similar ban was held insufficient to bar the privilege in *Counselman v. Hitchcock*, 142 U. S. 547. See *Ullman v. United States*, 350 U. S. 422.

The law should, therefore, be held unconstitutional as applied to individual members who have, in timely fashion, claimed their privilege. Accordingly, they should not be required to register.

POINT II

With respect to the First Amendment.

If the orders under review are sustained petitioners will be required to disclose their political association contrary to their desire to keep this private. We submit that no such invasion of First Amendment rights should be permitted barring a showing of grave public necessity, and that no such showing exists here or has even been attempted.

When this Court has upheld convictions based on the refusal of persons to answer questions about Communist affiliations before Congressional committees (*Barenblatt v. United States*, 360 U. S. 109; *Wilkinson v. United States*, 365 U. S. 399; *Braden v. United States*, 365 U. S. 431), it has been because of the importance of preserving the right of such committees to obtain information which they claimed was required for a legislative purpose.

But no such considerations exist here. No conceivable public purpose can be advanced to require a person to admit membership in any particular organization, especially when an administrative agency has made a public finding on the subject. Any conceivable public interest in knowledge about such membership is satisfied by the administrative finding. In the *Communist Party* case, 367 U. S. at 96-105, the obligation to register was upheld on the theory that Congress had the right to require an organization under foreign domination to make public certain information about itself which, of course, would not be provided by the mere finding of the Board that the organization was of the proscribed character. Here registration would add nothing to what the Board has already found.

Moreover, if the person cited has denied alleged membership, is he nevertheless forced to recant by the act of registering if the Board rules against him? Does not the registration requirement assume the infallibility of the administrative process? After all, the Board might erroneously have determined the fact of membership. The same problem could arise in connection with the character of an alleged Communist-action organization.

CONCLUSION

We submit, therefore, that the orders under review should be set aside.

Respectfully submitted,

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August, 1965